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September 29, 1997

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: CC Docket No. 94-129

Dear Mr. Caton:

Enclosed please find an original and four copies of LCI International Telecom Corp.'s Reply Comments to CC Docket No. 94-129 and a diskette containing the same.

If you have any questions or require additional information, please phone Mike Hazzard at 703-836-7370.

Sincerely,

Douglas W. Kinkoph by [signature]

Douglas W. Kinkoph

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

REPLY COMMENTS OF
LCI INTERNATIONAL TELECOM CORP.

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September 29, 1997

Introduction and Summary

In expanding the scope of its PC-verification rules, the Commission should maintain verification options that protect subscribers and maintain carrier flexibility. The Commission should reject suggestions that argue for restricting reasonable options for verifying PC changes. The Commission should retain the welcome-package verification option, and the Commission should not extend verification rules to in-bound telemarketing, at least until such time as the Commission develops a record on the slamming dangers of in-bound telemarketing.

The FCC should not consider allowing PC freezes for intraLATA or local exchange service until competition develops. PC freezes will do more to protect incumbents and their monopolies than to protect consumers. Consumers will receive real and substantial protection from unauthorized PC changes through the Commission's proposed PC-change verification rules. Adding the PC-freeze option on top of the Commission's verification rules may marginally decrease the likelihood of unauthorized service changes, but the PC-freeze option would exponentially increase the incumbents' ability to thwart competition by giving the ILECs a preemptive device, sanctioned by the FCC, with which to maintain ILEC monopolies.

Control of PC changes should reside with a third-party clearinghouse, not with the ILECs. The Commission should find it curious that every ILEC wishes to maintain its position as PC-change executor. Third-party control of PC changes would eliminate the tension between each ILEC's role as executing carrier and as market competitor. If the FCC determines that ILECs will remain responsible for executing PC changes, the

Commission should implement PC-change reporting and verification requirements to minimize the risk of ILEC opportunism.

As for remedies, the Commission should follow the plain language of the Act and require only that unauthorized carriers reimburse authorized carriers for charges collected. The compensation plans proposed by the commenters are complex, costly, and unlikely to work effectively. Moreover, Congress clearly stated that unauthorized carriers are liable only to the authorized presubscribed carrier only for revenue collected from unauthorized PC changes.

With the preceding in mind, LCI reiterates the following recommendations:

1. To the extent that the Commission regulates PC changes, the Commission should apply the same verification standards to local, intraLATA, and interexchange markets;

2. In expanding the scope of its PC-verification rules, the Commission should maintain verification options that protect subscribers and provide carriers with compliance options; and

3. The FCC should not allow PC freezes for intraLATA or local exchange service;

4. Control of PC changes should reside with a third-party clearinghouse, not with the ILECs;

5. As for remedies, the Commission should follow the plain language of the Act and require only that unauthorized carriers reimburse authorized carriers for charges collected.

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REPLY COMMENTS OF
LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp. ("LCI") submits these reply comments on the Commission's Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned docket.[1] LCI generally supports comments that favor the Commission's efforts to extend existing pre-subscribed interexchange carrier ("PIC") change rules to preferred-carrier ("PC") changes. However, until competition becomes rooted firmly in the intraLATA and local exchange markets, the Commission's PC-change rules should recognize and account for incumbent local exchange carriers' ("ILEC") control over the public telephone network and the resulting opportunities for ILECs to engage in anticompetitive and discriminatory activities against competitive local exchange carriers ("CLEC") and interexchange carriers ("IXC").

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1 Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, FCC 97-248 (rel. July 15, 1997).

A. To the extent that the Commission regulates PC changes, the Commission should apply the same verification rules to local and interexchange markets.

LCI supports comments that agree that, to the extent that the Commission regulates PC changes, the Commission should extend existing PIC verification rules to the intraLATA and local exchange markets. As competition develops for local exchange and intraLATA toll services, unauthorized PC changes for these services may become increasingly common. If unauthorized PC changes become pervasive, consumers may become suspicious of new entrants as service providers and consequently less willing to take advantage of the benefits that derive from local exchange and intraLATA toll competition. Thus, FCC action to extend existing rules to prevent unauthorized PC changes should enhance competition by giving consumers confidence that they control their choice of local, intraLATA, and interexchange service providers. Section 258(a) of the Act[2] expressly gives the Commission authority to develop procedures for preventing unauthorized carrier changes.[3]

If the Commission extends its existing PIC change verification rules to all PC changes, the local, intraLATA, and interexchange markets each should be governed by the same verification standards. ILECs, CLECs, and state commissions generally agree that the Commission should apply the same rules to the local, intraLATA, and interexchange markets. For example, BellSouth notes that "it should be possible for the Commission to establish one set of rules to govern the selection and change of a customer's designated carrier."[4] MCI remarks that "[a]pplication of the same verification standards to all services would be best for avoiding or

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2 Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq. ("the Act").

3 47 U.S.C. § 258(a).

4 BellSouth at i.

minimizing consumer confusion."[5] The North Carolina Public Utilities Commission Staff states that it "concurs with the [FCC's] tentative conclusion that the rules should apply to unauthorized changes of telecommunications exchange and toll service providers."[6] Such broad consensus for uniformity supports the Commission's tentative conclusion that it should implement the same verification rules for local, intraLATA, and interexchange service changes.

B. In expanding the scope of its PC-verification rules, the Commission should maintain verification options that protect subscribers and maintain carrier flexibility.

The Commission should not restrict the number or type of PC-change verification options as MCI[7] and others suggest; rather, the Commission should implement rules that protect subscribers from unauthorized PC changes through the least restrictive means available. That is, the Commission should implement less rigid verification standards for activities unlikely to result in unauthorized PC changes, such as in-bound telemarketing, while implementing heightened verification standards for activities relatively more likely to result in unauthorized PC changes, such as out-bound telemarketing.

The Commission should maintain each of the existing four verification options -- letter of authorization ("LOA"), confirmation by 800 number, confirmation by independent third party,

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5 MCI at 3.

6 North Carolina Public Utilities Staff at 3.

7 MCI suggests that the Commission should allow third-party verification only and that third-party verification should be used for in-bound calls. MCI at 4-10. MCI uses third-party verification to confirm all of its out-bound telemarketing calls, so its not surprising that MCI wishes to require its competitors to use it as well. For smaller carriers -- especially those that do not rely on out-bound telemarketing -- third-party verification is cost prohibitive.

and welcome package -- to allow a carriers to adopt verification means that best fit their marketing needs. As LCI explained in its comments, flexibility is critical to allowing carriers to market services to different types of customers. For example, in instances where a carrier's sales representatives are engaged in door-to-door sales, obtaining a written LOA is an effective verification device because the customer and the sales representative meet in person. For out-bound telemarketing sales, third-party verification can be effective because the sale can be verified by an independent third party in real time. Thus, in protecting consumers and in developing competition, the Commission should extend flexible verification rules to all local, intraLATA, and interexchange service providers.

MCI believes that different verification standards for different activities may invite "questionable behavior or outright fraud."[8] This is not the case; rather, flexible verification standards make regulation less burdensome by providing carriers of different sizes, resources, and product niches with compliance options, not a one-size-fits-all mandate. As AT&T notes in its comments, "[t]he mere promulgation of Commission verification regulations, no matter how stringent, cannot effectively discipline unscrupulous carriers that routinely ignore those rules in order to acquire customers."[9] The Commission should therefore endorse multiple verification options to provide carriers with compliance flexibility.

1. The Commission should retain the welcome-package verification option.

The welcome-package verification option provides subscribers with safeguards necessary to prevent unauthorized PC changes. In the FNPRM, the Commission tentatively concluded that

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8 MCI at 3.
9 AT&T at iii-iv.

it should eliminate the welcome package verification option because it acts as a "negative-option LOA" in that it requires consumers to take an affirmative step to stop a consumer-requested PC change.[10] As presently regulated by the Commission, the welcome package does not act as a negative LOA.[11] The welcome package is used to confirm a customer's order -- not to initiate customer contact -- and as such, the Commission should retain the welcome package verification option.

Additionally, LCI supports AT&T's suggestion that the Commission revise its welcome-package rule to limit data requirements.[12] For example, the FCC should not require welcome packages to list the name of the customer's present carrier. Many customers do not know the name of their interexchange carrier, and the name of a customer's existing carrier is unrelated to whether a customer wishes to change service. The data item is surplus and serves only to restrict the value and use of the welcome-package verification option.

2. The Commission should not extend verification rules to in-bound telemarketing.

In-bound telemarketing should remain exempt from the Commission's verification rules as it is less likely than other forms of marketing to lead to unauthorized PC changes. In-bound telemarketing, by definition, requires affirmative action by a customer who contacts the provider to purchase service. Through other forms of marketing, such as out-bound telemarketing or door-to-door sales, the service provider actively contacts the customer, who passively receives

10 FNPRM at ¶ 16-18.
11 AT&T at 5.
12 Id. at 6-7.

the solicitation. Because subscribers themselves generate in-bound telemarketing calls, service providers should not be required to verify these PC-change requests.

Many commenters correctly note that the Commission has not developed a record on which it competently could judge the degree to which in-bound telemarketing results in slamming. In its comments, AT&T notes that "there is no record before the Commission that could conceivably justify the conclusion that in-bound calls account for any measurable number of unauthorized carrier changes, or that there is any reasonable likelihood that such calls are likely to do so."[13] Southern New England Telephone ("SNET") recommends that the Commission conduct research through the customer complaint process to determine the degree to which slamming abuse occurs through in-bound customer calls.[14] Consequently, before the Commission acts to restrict a carrier's ability to receive an in-bound order, the Commission should review carefully existing data to determine whether in-bound calling poses a significant slamming risk.[15]

If the Commission extends its PC-change verification rules to in-bound telemarketing, the Commission should regulate passive in-bound telemarketing less rigidly than it regulates active

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13 Id. at 22-23; see also US WEST at 33-34 and BellSouth at 11.

14 SNET at 9.

15 Research conducted by AT&T suggests that in-bound telemarketing poses only a nominal slamming risk:

> [I]n response to a Freedom of Information Act request from AT&T seeking summary data on the sources of slamming complaints, the Commission had produced a representative sample of 430 informal complaints and "identif[ied], by category and frequency," the causes of those complaints. Of those complaints, only four -- or less than one percent -- involved alleged slamming through ... in-bound calling.

AT&T at 26-27 (emphasis original).

forms of solicitation. In-bound telemarketing requires affirmative action by a subscriber who requests a PC change. Because the potential subscriber actively has solicited the telecommunications provider for service, the risk of an unauthorized PC change is low; therefore, the Commission should endorse a low-burden verification method if it regulates in-bound telemarketing.[16]

C. The FCC should not consider allowing PC freezes for intraLATA or local exchange service until competition develops.

While ILECs favor PC freezes,[17] providing ILECs with the ability to solicit, and in some cases implement, PC freezes for intraLATA and local exchange service effectively would provide ILECs with an FCC-sanctioned means of foreclosing competition. The Commission's proposed rule states that carriers may encourage subscribers to request PC freezes through mailers that (a) explain PC freezes, (b) explain subscribers' rights to request freezes, and (c) explain to subscribers how to obtain PC freezes.[18] This rule, because it effectively places no limit on the types of marketing material that an ILEC also may include in a mailer, will enable ILECs to market aggressively PC freezes to lock in their customer base, effectively preventing competition from making any substantial in-roads in the intraLATA toll and local exchange markets.

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16 A verification option like the welcome package (which the Commission's current proposal eliminates) would place minimal verification burden on carriers and provide subscribers with the safeguards necessary to prevent unauthorized PC changes resulting from in-bound telemarketing.

17 Ameritech at 19; Bell Atlantic at 4; BellSouth at 4; Cincinnati Bell at 8; GTE at 11; SNET at 6; Southwestern Bell et al. at 9; US WEST at 39.

18 FNPRM at ¶23.

PC freezes will do more to protect incumbents and their monopolies than to protect consumers. PC freezes will benefit monopolists by increasing the transactions costs associated with changing carriers, which directly will slow the growth of competition. Under the PC-freeze rule supported by the incumbents, a customer must phone -- and in some cases write[19] -- the incumbent to request a PC-freeze removal. Only after the PC freeze is removed, may a competitor submit a PC change to the ILEC for execution. The PC freeze thus effectively limits the growth of competition by increasing the number and difficulty of the steps required for a customer to make a service change under the auspices of "protection."

Consumers will receive real and substantial protection from unauthorized PC changes through the Commission's proposed PC-change verification rules. The PC-freeze option in addition to the Commission's verification rules may marginally decrease the likelihood of unauthorized service changes, but the PC-freeze option would exponentially increase the incumbents' ability to thwart competition by giving the ILECs a preemptive device, sanctioned by the FCC, with which to maintain ILEC monopolies. All in all, the potential competitive imbalances created by ILEC-generated PC freezes for intraLATA and local exchange service outweigh the consumer protection offered by PC freezes. Thus, the Commission should not endorse local exchange PC freezes.[20]

If any question exists as to whether incumbents may attempt to use PC freezes as an attempt to foreclose competition, one need not look any further than Ameritech's initial comments to the Commission's FNPRM. In its comments, Ameritech unabashedly states that it

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[19] GTE at 13.

[20] Once competition firmly takes root in the intraLATA and local exchange markets, the Commission may wish to consider again whether PC freezes should be available.

"sees no reason why carriers should not be permitted to ask customers whether they would like [a] PC [freeze] at the time the customers sign up for service."[21] Additionally, while Ameritech wholeheartedly supports intraLATA and local exchange freezes, Ameritech hedges when it comes to interexchange freezes.[22] Clearly then, if given permission to market and solicit PC freezes, ILECs will have a new and effective method of slowing the growth of competition in the intraLATA and local exchange markets, which the Act expressly was designed to open.[23]

If the Commission were to endorse PC freezes, then the Commission should require ILECs to verify rigorously any PC freezes before execution. For verification, LCI supports AT&T's suggestion that the Commission should require ILECs to confirm all intraLATA and local PC freezes in writing and to require that written statements note the service level (i.e., local, intraLATA, or interexchange) to which the freeze applies and the corresponding carrier's name.[24]

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21 Ameritech at 22.

22 Id. at 23-24 (As to "whether PC protection of a customer's IXC should continue in effect if the customer changes LECs[;] Ameritech believes that such a result would not be in the public interest.").

23 Ameritech has a history of using PC freezes to limit competition. In Illinois, for example, Ameritech launched an effort to lock in its intraLATA toll customers just prior to the implementation of intraLATA presubscription. Illinois Bell included in its December 1995 bill an insert offering customers the ability to "freeze" their long distance services to prevent unauthorized changes, or "slamming." LCI, AT&T, and MCI filed a joint complaint and Sprint filed a similar complaint with the Illinois Commerce Commission ("ICC") on February 13, 1996, (Docket No. 96-0075/0084 cons). The ICC found that the bill insert was misleading and failed to inform customers that the freeze would apply to all telecommunications services. The ICC also found that the bill insert was discriminatory and anticompetitive in that it established unfair and unreasonable barriers to intraLATA toll competition.

In a similar case, the Public Utility Commission of Ohio recently concluded in Case No 96-142-CS-CSS that Ameritech's "Prohibit PIC Change" program created unreasonable hurdles for the development of fair and effective competition in the intraLATA and local exchange markets in Ohio.

24 AT&T at 19 n. 23.

Not surprisingly, ILECs resist any PC-freeze verification requirements.[25] However, because the availability of PC freezes will encourage the ILECs to use the PC freeze as a means to limit competition to only glacial advances, the Commission should place exacting verification requirements on PC freezes.

D. Control of PC changes should reside with a third-party clearinghouse, not with the ILECs.

ILECs generally argue that they should remain the gatekeepers of all PC changes and that they should not be subject to special Commission rules to limit the tension between each ILEC's role as a competitor and as the executor of PC changes.[26] The Commission should find it curious that every ILEC wishes to maintain its role as PC-change executor in spite of the administrative costs associated with this position. Perhaps ILECs wish to retain the executor function because it permits ILECs to control which competitors provide service to which customers, how rapidly service changes are implemented, and how strictly verification rules are enforced. The Commission's proposed rules will incent ILECs to discriminate against competitors, to not verify ILEC orders as stringently as CLEC orders, and to abuse customer proprietary network information ("CPNI"). Fairness demands that PC-change execution responsibility should reside with a third-party clearinghouse, and not with the ILECs.

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25 See, e.g., BellSouth at 12.

26 See e.g., Ameritech at 15.

1. The proposed rules for submitting and executing carriers are not administrable because they incent ILECs to discriminate against competitors.

The submitting and executing rules proposed by the Commission incent ILECs to discriminate against IXCs and CLECs submitting PC changes. PC-change volumes likely will increase as ILECs make strides in the long distance market and as CLECs make strides in intraLATA and local markets. As these volumes increase, the Commission's rules could encourage ILECs to discriminate in favor of their long distance affiliates and local retail operations. For example, ILECs could discriminate by processing competitor orders more slowly than ILECs process their own orders or by using more rigorous verification standards for competitor orders than for ILEC orders. The proposed rules are silent as to how to prevent subtle discrimination in PC-change processing and verification.

The submitting and executing rules proposed by the Commission incent ILECs to make PC changes without proper verification. The Commission itself notes that its rules might give ILECs "an enhanced ability to make unauthorized PC changes on their own behalf without detection."[27] The Commission counters this point by stating that heightened ILEC scrutiny of CLEC PC-change requests will "have the positive effect of lessening or eliminating the occurrence of unauthorized PC changes."[28] Conversely, while ILECs zealously might guard against unlawful PC changes submitted by CLECs, ILECs are very unlikely to monitor themselves as carefully. Under the Commission's proposed rules, no one -- absolutely no one -- is charged with monitoring the PC changes submitted by the ILECs.

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27 FNPRM at ¶ 15, n. 49.
28 Id. at n. 50.

Statements made in the ILECs' comments put the Commission on notice that its proposed PC-change execution rules will incent ILECs to abuse CPNI. Ameritech admits that it "makes an effort to contact customers after they have switched from Ameritech to another carrier in an effort to win them back."[29] SNET -- an ILEC that offers long distance to its local customers -- presently markets a PIC freeze, which it calls "Carrier Choice Protection" and implements freezes without third-party verification.[30] BellSouth is "puzzled" by the Commission's belief that ILEC letters to customers lost to competition would be different from interexchange carrier or CLEC letters to customers lost to competition.[31] The distinction, at least for the time being, is that the interexchange market is competitive, whereas the intraLATA and local exchange markets are monopolized by the ILECs. Moreover, in the interexchange market, IXCs are similarly situated with respect to PIC changes, but in the intraLATA and local markets, ILECs will have the advantage of acting as gatekeepers in addition to acting as competitors under the Commission's proposed rules.

ILECs also will have an information advantage over their competitors. By executing essentially every single PC change, ILECs will have the overwhelming majority of information on which customers are most likely to change service. This information on PC changes would amount to a Win-Back database composed of confidential information from IXCs, intraLATA toll resellers, and local exchange resellers. As MCI noted, "[w]hile doing testing for entry into the local market in at least two different RBOC territories, the incumbent made attempts to 'win-back' or retain local customers won by MCI <u>before</u> MCI was even notified that the requested

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29 Ameritech at 6.
30 SNET at 7.
31 BellSouth at 9.

switch had been made."[32] The Commission should expect ILECs to use any information at their disposal to wage Win-Back campaigns, and PC-change databases will be a robust source of information on how to Win Back and retain customers. Thus, allowing ILECs to execute PC changes will give ILECs a real and significant information advantage over competitors.

2. Third-party clearinghouse control of PC changes would eliminate the tension between each ILEC's role as executing carrier and as market competitor.

The FCC should consider utilizing an independent third party as a PC-change clearinghouse to eliminate the tension that exists with ILECs serving as both PC-change referees and competitors. A clearinghouse approach would place ILECs in the same position as CLECs and IXCs relative to PC changes.

A clearinghouse model likely would mitigate ILEC CPNI abuse by limiting the amount of CPNI data that ILECs receive. That is, if ILECs do not have data on their competitors' customers, they will not be tempted to use competitors' CPNI data unlawfully. Thus, the clearinghouse approach would go a long way toward eliminating any actual or perceived impropriety of having the ILECs serve as gatekeepers of PC changes. The Commission successfully has developed clearinghouse models in similar cases (e.g., 800 number portability) and should do so again to ensure that PC changes are executed fairly.

New entrants support the idea of a third-party clearinghouse. Demonstrating the need for a third-party PC administrator, MCI notes that "[i]n a competitive telecommunications market, allowing the incumbent LEC to administer the PC process is intolerable [as] ... it is clear the

32 MCI at 6 (emphasis original).

incumbent LECs will use whatever means possible to get an advantage in the market place."[33] The Telecommunications Resellers Association "strongly supports 'the use of an independent third party to execute PC-changes neutrally' and urges the Commission to extend to this independent administrator the authority to oversee the implementation of PC-freezes as well."[34] Incumbents, predictably, disagree. BellSouth submits that establishing a third party to execute PC changes is unnecessary, impractical, too costly, and would create unnecessary duplication.[35]

3. If the FCC determines that ILECs will remain responsible for executing PC changes, the Commission should implement PC-change reporting and verification requirements to minimize the risk of ILEC opportunism.

If the FCC concludes that ILECs should serve as both submitting and executing carriers of PC changes, the Commission should act to mitigate the competitive risks associated with ILECs serving as submitting and executing carriers. In the FNPRM the Commission suggested that commenters address "requirements" or "prohibitions" that the Commission could implement to offset ILEC advantages as executing carriers.[36] To offset anticompetitive risks, the FCC should require ILECs to provide competitors with parity of access to PC changes on a nondiscriminatory basis and to track and report data on PC changes to ensure that ILECs meet parity and nondiscrimination requirements. Additionally, for all PC transactions for which an ILEC serves as the submitting and executing carrier, the FCC should require independent third-party verification before implementation.

33 Id. at 25.
34 Telecommunications Resellers Association at 18.
35 BellSouth at 16.
36 FNPRM at ¶ 11.

The Commission should state in its order that ILECs must provide competitors parity of access to PC changes on a nondiscriminatory basis. Parity of access means that ILECs must provide competitors with access to PC changes at least as quickly and as accurately as each ILEC provides itself, its affiliates, and its subsidiaries. Nondiscriminatory access means that each ILEC must provide its competitors with access to PC changes at least as quickly and as accurately as the ILEC provides other competitors. In cases where ILECs are not providing parity of access to PC changes on a nondiscriminatory basis, the Commission should stay an ILEC's ability to implement PC changes submitted on its own behalf (or on behalf of its affiliates or subsidiaries) until such time as the ILEC can demonstrate that it is meeting Commission requirements.

To measure whether ILECs are providing parity of access to PC changes, the Commission should require ILECs to record and report data on PC changes. In these reports, ILECs should disclose on a monthly basis performance benchmarks (e.g., time it takes to implement PC change) for PC changes and maintain these records over time. Reports should contain data relating to the ILEC itself, ILEC affiliates/subsidiaries, IXC competitors in aggregate, and CLEC competitors in aggregate. Additionally, each IXC and CLEC should receive its own individual performance data. With these reports the Commission, competitors, and ILECs will have the ability to determine whether an ILEC is providing parity of access to its competitors on a nondiscriminatory basis.

In addition to meeting the verification requirements of submitting carriers, the Commission should require ILECs to obtain independent third-party verification of ILEC-submitted PC changes. As noted, the Commission's proposed rules incent ILECs to act as independent third parties that verify CLEC PC change submissions. ILEC PC changes, in cases where the ILEC acts as the submitting and executing carrier, face no independent verification check, making it comparatively easier for ILECs to shirk verification responsibilities. Requiring ILECs to receive independent third-party verification before executing ILEC-submitted PC changes fundamentally would equalize the scrutiny CLEC and ILEC PC changes face, and thus would offer subscribers equal protection from unauthorized carrier changes submitted by CLECs and ILECs.

Incumbents and new entrants support ILEC reporting requirements. Ameritech notes that, "the Commission could ... require LECs to submit quarterly reports showing the number of PC change orders submitted by each carrier, and the number disputed by the end users."[37] Bell Atlantic states that PC change parity requirements would be reasonable because "the Commission has already found that ILECs must 'provision[] resale orders within the same average installation interval as that achieved by its retail operations.'"[38] CompTel states that "to ensure compliance with the nondiscrimination standard, incumbent LECs should be required to submit quarterly reports showing PC-change performance intervals and error ratios."[39]

Finally, if the Commission were to allow ILECs to serve as PC-change executors, the Commission should expressly prohibit executing carriers from requiring any verification standards in addition to those set by the Commission (e.g., written LOAs only). As MCI noted, "[t]he anti-competitive risks are even greater if the incumbent LEC is required or permitted to do any sort of verification for a submitted PC change." ILECs should not police PC changes for the

37 Ameritech at 12.
38 Bell Atlantic at 6.
39 CompTel at 6.

Commission, as such a requirement could incent ILECs -- as enforcer and competitor -- to act as "rogue cops."

E. As for remedies, the Commission should follow the plain language of the Act and require only that unauthorized carriers reimburse authorized carriers for charges collected.

ILECs, CLECs, state commissions, consumer groups, and industry associations support a wide array of Byzantine and costly slamming reimbursement schemes all of which exceed the simple remedy authorized by Congress in section 258(b) of the Act. The Commission should implement the remedy approved by Congress and not attempt to fashion a complex reimbursement regime.

Section 258(b) states that "any telecommunications carrier that violates [the Commission's] verification rules ... shall be liable to the carrier previously selected ... in an amount equal to all charges paid by such subscriber after such violation." This plain language clearly and unambiguously indicates that Congress intended unauthorized carriers to remit any unauthorized charges collected only to the authorized carrier.

Because the Congressional remedy provided in section 258(b) is express and unambiguous, the Commission should follow it, and not substitute its own remedy. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[40] In section 258(b), Congress

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[40] Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984); see also, Mississippi Power & Light Co. v. Moore, 487 U.S. 354, 382 (1988)(Scalia, J., concurring).

expressly indicated that before the Commission could find a telecommunications service provider liable for charges resulting from an unauthorized PC change, the Commission would have to demonstrate: 1) that the carrier violated the Commission's verification rules and 2) that the carrier collected charges resulting from the unauthorized service change. If the Commission establishes these two conditions, the Commission must require the unauthorized carrier to remit to the authorized carrier any revenue collected as a result of the unauthorized service change. Thus, section 258(b), entitled "liability for charges," expressly requires carrier-to-carrier compensation, unambiguously excluding carrier-to-subscriber compensation for unauthorized PC changes.

The complexity and variety of the commenters' proposed remedial provisions suggests that the Commission should take a simple approach and implement the remedies expressly authorized by the Act, rather than advance an unadministrable liability scheme. For example:

- BellSouth believes that the offending carrier should be liable to the authorized carrier for the value of any products or services and that the authorized carrier, once having received value for those products and services, should be required to restore premiums to the subscriber.[41]

- Ameritech believes that the Commission should require slammed subscribers to pay the authorized carrier according to its rates and then require the authorized carrier to reinstate lost premiums.[42]

- Adding a level of complexity to the Ameritech approach, MCI believes that if the authorized carrier is fully compensated for lost revenues, then the authorized carrier should make the consumer whole by reinstating lost premiums; but if the consumer's authorized carrier is not compensated completely for revenues lost to the unauthorized carrier, then the authorized carrier should not have to compensate the

41 BellSouth at 13.
42 Ameritech at 29.

consumer for lost premiums.[43]

- Southwestern Bell suggests that the Commission should require unauthorized carriers to remit any excess charges for service to the customer and also compensate the customer for associated expenses. Next, the unauthorized carrier would reimburse the authorized carrier for all lost revenues and expenses. Finally, the unauthorized carrier would reimburse the executing LEC for the expense of restoring the authorized carrier.[44]

Each of these options and the Commission's proposed rule are cumbersome and likely will bog any compensation negotiation into a costly legal morass. Congress' statute requires unauthorized carriers to remit any revenue collected to the authorized carrier. This rule is simple, it is clear, and it is what Congress mandated.

F. LCI reiterates recommendations made in its initial comments.

LCI reiterates the following recommendations:

1. To the extent that the Commission regulates PC changes, the Commission should apply the same verification standards to local, intraLATA, and interexchange markets;

2. In expanding the scope of its PC-verification rules, the Commission should maintain verification options that protect subscribers and provide carriers with compliance options; and

3. The FCC should not allow PC freezes for intraLATA or local exchange service;

4. Control of PC changes should reside with a third-party clearinghouse, not with the ILECs;

5. As for remedies, the Commission should follow the plain language of the Act and require only that unauthorized carriers reimburse authorized

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43 MCI at 23.

44 Southwestern Bell <u>et al.</u> at 11-12.

carriers for charges collected.

DATED: September 29, 1997

Respectfully submitted,

By: Douglas W Kinkoph

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